**Possible Questions - Forum Club 11/14/94**

Jim
See comments - thanks
Lucie -
If you make changes it helpful now as is near closing if when typing the changes could be marked with a line, boss type etc
thanks
G 10/

Q. **Split-up/protecting food.** Does the vulnerability of your food side increase as legal problems mount? What will you do to protect your food business? And as legal problems mount, will the odds of a split continue to decrease with time?

A. I am not a lawyer, so any answer I give is purely speculative. But we believe that we will prevail in the current litigation, so we do not believe that our food business needs additional "protection." However, we also believe that we would have prevailed against challenges of a split-up. So in effect, we believe our food business is already fitted out with all available belts and suspenders.

Obviously, as the number and type of plaintiffs grow, so do the number and type of challengers who might claim that a split-up would constitute a fraudulent transfer of assets.

But over time, if we prevail against the plaintiffs in the actions currently against us, as we should, there should be fewer potential challengers to a split. So if anything, we believe that this potential legal obstacle to a split could shrink over time.

However, if that happens, the stock price ought to recover too, so there could be less incentive to split up the company. We'd have to consider all the factors. But we never say never.

Q. **Dodd Litigation Reform Act**. Do you support the Private Securities Litigation Reform Act of 1994, introduced by Senator Christopher Dodd of Connecticut?

A. We have not studied the proposed legislation in detail. To the extent that it would prevent abuses of power by lawyers filing groundless and onerous class-action securities lawsuits, we are obviously in sympathy with its goals.

Q. **External issues-general.** Do you believe the latest Congressional and legal attacks on tobacco have crested? Why or why not?

A. We can't say that we've reached the peak. But we believe that we are on solid ground in Congress and in the courts. We are fighting back very aggressively.

We believe that we should win in the courts, that Dr. Kessler and Congress should not find a role for the FDA in regulating cigarettes, and that the ridiculous proposed OSHA regulations should fall flat on their face. So we do expect that, in time, some of the wind will be taken out of our opponents' sails.

2040110059



Source: https://www.industrydocuments.ucsf.edu/docs/llwc0003

Q. What do you expect to gain from ad campaigns like the one critical of the E.P.A.? I understand that the E.P.A. stands by its findings.

A. We want people to understand that there are genuine, significant flaws in the E.P.A.'s report. Anti-smokers use a lot of flawed science to promote their cause. They say it's for a good cause, but it's still rotten science.

Just assuming that the E.P.A. is right, and that secondhand smoke is bad, leads to all sorts of unreasonable intrusions on smokers' rights, in the form of restrictions on smoking in public and in the workplace. We're even seeing restrictions on smoking outdoors under certain circumstances. (e.g. within a certain number of feet of a hospital of workplace.) We believe that reasonable accommodation -- of the interests of both smokers and non-smokers -- makes a lot more sense.

And you'd expect the E.P.A. to stand by its report. No one likes to admit that they fudged the data. But that's why we've taken the E.P.A. to court.

Q. Do you have a new strategy for dealing with external issues?

A. Important thing is that we have the resources, knowledge, experience and will to deal with these issues aggressively and pro-actively. We plan to fight, and we are right in our positions. When you're right, and you fight, you win -- as simple as that.

Examples of our actions:

- Unfortunately, in some situations, the appropriate forum to correct certain abuses is the courtroom. E.P.A., San Francisco, Cap Cities/ABC.

- Fortunately, there are many other options, and we will be using them to get important messages out.

- E.g. advertising - we ran an ingredients ad, and an ad on Bill Campbell's testimony before Congressman Waxman's hearing.

- The recent ad campaign, highlighting the E.P.A.'s bad science, is a good example of pro-active issue management. We are not only suing the E.P.A. in federal court, but also attacking them in the court of public opinion.

Q. What is the status of tobacco product liability litigation against you?

A. There are currently approximately 66 cases pending against the industry, 35 of which name Philip Morris as a defendant. (8/30/94 figures.) That total is down considerably from the peak of 151 in 1986.

2040110060



Source: https://www.industrydocuments.ucsf.edu/docs/llwc0003

Q. You said that there's no real news on the litigation front. But aren't the addiction claims, and grounds for lawsuits, new?

A. No. Addiction was an issue in the Cipollone case, and the jury found in our favor. The fact is that over 40 million people have quit smoking, and juries apply their own common sense to conclude that people who want to quit can, and do, quit.

Q. But aren't the class actions new?

A. Maybe in form, but not in substance.

First of all, none of the purported class actions has been certified. The industry has strong arguments against certification, including: (1) the classes commonly discussed involve unmanageable numbers of people, and (2) the main issues relate to individual plaintiffs and are not truly common to all plaintiffs.

REDACTED

Even if a class were certified, each and every individual class member would have to prove that he or she was injured, and that cigarettes caused the injury. All of the industry's traditional defenses -- including statute of limitations, assumption of risk, adequate product warning and freedom of choice -- would be available to the industry against each and every one of the class members.

REDACTED

(8/30/94-Current status of class actions: one in New Orleans; industry won a stay from Florida State Court of Appeals in Engle case pending resolution of suit in New Orleans. In the flight attendants' ETS case, the plaintiffs won only the right to try to prove that a class should be certified.)

Q. What about all the Brown & Williamson documents that have come out? Aren't they pretty incriminating?

A. We can't really comment on the documents, since we only know what has appeared in the press. But we haven't seen anything very different from the documents that were produced in the Cipollone case, and as you remember, we won that case. So far, we have seen nothing that should change the complexion, or ultimate outcome, of the lawsuits against us or the industry.

Q. Aren't the lawsuits in Mississippi, West Virginia, Minnesota and Florida new? You've never been up against a whole state in a product liability case.

A. The suit filed by the Attorney General of Mississippi and the one threatened by the State of Florida, to recover Medicaid costs associated with illnesses allegedly related to smoking are somewhat novel. However, we are attacking the Florida statute on both Federal and state constitutional grounds. In any suit of this type, we have strong defenses available to us.



2040110061

Source: https://www.industrydocuments.ucsf.edu/docs/llwc0003

Minnesota, Mississippi, and West Virginia (and Massachusetts, if a suit is filed) - Fundamentally the same as previous smoking and health cases the industry has successfully defended.

State has to prove, for each and every individual, that his or her illness was caused by smoking. Similarly, industry has all the defenses it has used successfully in defending other typical smoking and health cases. (E.g. assumption of risk/freedom of choice -- the plaintiff chose to smoke cigarettes while fully aware of the hazards.) Also similar in the desire of the trial lawyers to increase their personal wealth.

The only difference in these cases is that, because the state is the plaintiff, the costs for litigating the suit will be paid for by the taxpayers of the state.

Florida - We've joined with other companies and industries in Florida in opposition to this legislation. We have also joined the Associated Industries of Florida, Publix Supermarkets and the National Assbciation of Convenience Stores in a suit seeking to have the law ruled unconstitutional on the grounds that, among other things, it denies due process to defendant companies.

Following the defendant's reply to our suit, and the likely series of briefs and replies, arguments could be heard some time in November. During this time, Florida could file a lawsuit against us, but our constitutional challenge would probably take precedence.

If our constitutional challenge fails, and if the statute is not repealed, we still have strong defenses:

- First, under common law in Florida (and other states), plaintiffs' would still have to prove a product defect -- that the product was more dangerous than ordinary consumers would expect, or that there was an alternative, safer design that we didn't use. Alternatively, plaintiffs would have to prove that we did something actionable, for instance fraudulent misrepresentation, that contributed to the damages in question.

- Second, plaintiffs would still have to convince a jury that the statistical associations between smoking and various diseases establish causation.

- Finally, we would still have available to us the preemption and other defenses that Cipollone established.

Q. What are you going to do if Commissioner Kessler recommends FDA jurisdiction over cigarettes?

A. Issue has been raised repeatedly. The courts, Congress, and even the FDA itself until recently, have consistently said that the FDA should not regulate traditionally marketed cigarettes. Nothing has really changed to cause a shift in the logic of that position, and we do not believe that FDA regulation will occur.



2040110062

Source: https://www.industrydocuments.ucsf.edu/docs/llwc0003

Already heavily regulated, strongly believe that no further regulation is necessary.

Do not believe that the FDA has a basis for asserting regulatory jurisdiction under existing law. See no reason for Congress to confer new jurisdiction on the FDA in this area.

(Waxman/Synar background, from Vic Han -- Clearly, Congress as a whole does not support their measures. Synar's bill has not had support. Waxman has been trying to get his bill out of committee for three years and has been unable to do so.

Q. What about the testimony, first from Commissioner Kessler and then from Brown & Williamson, about tobacco plants and chemicals that result in higher "free" nicotine delivered to the smoker?

A. I cannot speak for the chemicals and processes under by other companies. But I can say categorically that we have never used any technology, including genetic engineering, to increase nicotine levels in cigarettes.

(Ammonia background, from Vic Han and Tony Andrade -- Although the now-public "industry list" of ingredients included ammonia and certain ammonia compounds, our specific ingredients are trade secrets. But we can explain that ammonia and various ammonia compounds are commonly used in tobacco processing. (And in food processing also, in fact.) In tobacco processing:

- They release pectins, which act as a glue holding the tobacco together in sheet.

- They are flavoring agents. Note that burley tobacco, which has the highest concentration of ammonia, is known as the most flavorful.

Despite Commissioner Kessler's grandstanding, none of this is news to the government.

Q. What will happen to your business if OSHA's recommended restrictions are adopted, or the Waxman bill is enacted?

A. We don't think they will be adopted or enacted, and that should be the end of the story.

The over-reaching restrictions proposed by OSHA and contained in Congressman Waxman's bill are both based on the EPA's risk assessment for environmental tobacco smoke. That report, in our opinion, is based on faulty science.

2040110063



Source: https://www.industrydocuments.ucsf.edu/docs/llwc0003

We have challenged the EPA's determination in a lawsuit; other scientists, and journalists, have also challenged the EPA. (Hardly the first or only time the EPA has engaged in bad science.) In final analysis, best approach to environmental tobacco smoke is accommodation -- embraced by the majority of both smokers and non-smokers.

(Background from Vic Han -- The industry and other businesses are in the process of providing scientific, legal and technical comments on the issue of indoor air quality. Many workable and common-sense policies are currently in place in various states -- accommodating smokers and non-smokers has worked. Over time, we feel a responsible policy will be developed. The vast majority of Americans, according to research and polls conducted by news organizations and anti-smoking groups, prefer accommodation to Draconian measures.)

Q. What about the fire safe cigarettes that "60 Minutes" identified? They're on the market, aren't they?

A. Those cigarettes have been identified as "fire safe" using vacuum tests. As you can imagine, self-extinguishing properties in a vacuum chamber aren't the same as in the ordinary environment -- where there's plenty of oxygen.

General: We've been trying to develop a fire safe cigarette for years, but so far haven't been able to produce one that would be commercially acceptable. We are continuing these efforts, believe they will be successful in time. Meanwhile, cooperating with Congressman Moakley, who is developing legislation that would establish realistic standard to define "fire safe".

2040110064



Source: https://www.industrydocuments.ucsf.edu/docs/llwc0003